



FILED
DISTRICT COURT OF GUAM

NOV 09 2010

JEANNE G. OUMATA
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

J.C. et al.

Plaintiff,

v.

CAMACHO et al.,

Defendant.

No. CV 01-0041 CBM

ORDER REQUIRING DEPOSIT OF
RES

Pursuant to the Court's Order Appointing a Federal Management Team dated March 2, 2010, and following the approval of the Federal Management Team's ("the FMT") Plan of Action on September 8, 2010, the Court hereby approves the FMT's request for an initial *res* in the amount of \$15,950,000, which represents the cost of the implementation of the Amended Permanent Injunction and Plan of Action, excluding the costs of the Center, to be deposited by the Government of Guam, in accordance with the terms of this Order. [See Doc. Nos. 756, 793, 794.]

FACTUAL AND PROCEDURAL BACKGROUND

On July 25, 2001, Plaintiffs initiated this action against Defendants, the then-Director of the Department of Mental Health and Substance Abuse ("DMHSA"), the

1 then-Director of the Department of Integrated Services for Individuals with
2 Disabilities ("DISID"), and the Governor of Guam (collectively, "Defendants"),
3 claiming, *inter alia*, that Guam's failure to provide community-based living services
4 to the Plaintiffs and those similarly situated violated the federal constitution and
5 various federal statutes. [Doc. No. 1.]

6 Following a bench trial, the Court, in its Findings of Fact and Conclusions of
7 Law, found that Defendants had discriminated against Plaintiffs by requiring them to
8 reside in Adult In-patient Units to receive services. In addition, the Court found
9 that: (1) Plaintiffs were not receiving proper care and appropriate community-based
10 services; (2) Defendants had violated the Americans with Disabilities Act and
11 Section 504 of the Rehabilitation Act of 1973; and (3) Defendants violated
12 Plaintiffs' constitutionally-protected liberty interest to be free from "undue restraint"
13 under *Youngberg v. Romeo*, 457 U.S. 307, 319-23 (1982). [Doc. No. 276.]

14 A Permanent Injunction was thereafter issued by the Court on June 9, 2004.
15 [Doc. No. 277.] On June 30, 2005, the Court issued an Amended Permanent
16 Injunction enjoining Defendants from treating Plaintiffs in a manner that violates
17 their constitutional and statutory rights and requiring Defendants to provide
18 treatment and develop programs in accordance with the terms of the Amended
19 Permanent Injunction. [Doc. No. 307.]

20 Over the ensuing years, the Court employed numerous methods to secure
21 Defendants' compliance with the Amended Permanent Injunction, including the
22 appointment of a Special Master, [Doc. No. 272], the appointment of Court
23 Monitors, [Doc. No. 433], and the issuance of Minute Orders requiring the
24 completion of discrete objectives to ensure incremental progress towards the
25 requirements set forth in the Amended Permanent Injunction. Notwithstanding the
26 Court's wide-ranging efforts, Defendants repeatedly failed to both comply with the
27 terms of the Amended Permanent Injunction and meet the deadlines set forth in the
28 Court's numerous Minute Orders. On March 2, 2010, the Court therefore appointed

1 the FMT to assume the duties and powers necessary to achieve full and complete
2 compliance with the Amended Permanent Injunction. [Doc. No. 756.]

3 Pursuant to the Court's Order, the FMT created and submitted to the Court the
4 Plan of Action, which enumerates the objectives and tasks the FMT will undertake
5 to satisfy the requirements provided in the Court's Order and achieve full and
6 complete compliance with the Amended Permanent Injunction, including the costs
7 necessary to realize the implementation of the Plan of Action. The Court approved
8 the Plan of Action on September 8, 2010. [Doc. No. 794.] The FMT thereafter
9 presented the Plan of Action to the Court at a status conference held on September 9,
10 2010. [Doc. No. 793.]

11 **IMPROVEMENTS SINCE THE APPOINTMENT OF THE FMT**

12 Since their appointment in March 2010, the FMT has made significant and
13 tangible progress toward achieving the requirements set forth in the Amended
14 Permanent Injunction. Specifically, the FMT has enrolled approximately twenty-
15 four (24) members of the target population in the Shelter Plus Care Program, which,
16 in turn, enables consumers to live in community-based, integrated settings while
17 simulatenously generating significant savings for the DMHSA. The FMT has also
18 hired critical personnel, facilitated the transfer of a Supportive Housing Grant for the
19 Guma Hinemlo Residential Group Home from Catholic Social Services to the
20 DMHSA, and developed policies and procedures necessary to meet the standards of
21 care and placement recognized in the Amended Permanent Injunction. In sum, the
22 Court finds that the FMT has made more substantial improvements in the past seven
23 months than Defendants were able to accomplish in the many years preceding the
24 appointment of the FMT.

25 **FUNDING NECESSARY TO IMPLEMENT THE PLAN OF ACTION**

26 Having reviewed the Plan of Action and considered the FMT's presentation
27 thereof, the Court also finds that the Plan of Action is a necessary prerequisite to
28 achieving full and complete compliance with the Amended Permanent Injunction.

1 The Court notes that the FMT consulted a broad spectrum of local and federal
2 agencies, organizations, and medical professionals in formulating the Plan of
3 Action. Contributing entities include, but are not limited to, the Office of the
4 Governor, members of the Guam legislature, the Office of the Public Guardian, the
5 Mental Health Court, the Bureau of Budget Management and Research, the
6 Department of Corrections, the University of Guam, the Guam Housing & Urban
7 Renewal Authority, the Guam Memorial Hospital Authority, the DMHSA, the
8 DISID, the United States Substance Abuse and Mental Health Services
9 Administration, the United States Department of Health and Human Services, the
10 United States Department of Education Rehabilitation Services Administration, the
11 National Association of State Mental Health Program Directors, the American
12 Psychological Association, Catholic Social Services, and members of the target
13 population.

14 To fully realize the constitutionally and statutorily mandated level of
15 treatment and care set forth in the Amended Permanent Injunction, the Court finds
16 that Defendants must post an additional *res* in the amount of \$15,950,000. This
17 figure represents the funds necessary to establish, *inter alia*, community-based living
18 options, mobile treatment outreach teams, individualized treatment and service
19 packages, improved psycho pharmacology practices, much-needed training and a
20 Personal Care Attendants' curriculum.

21 The FMT provided a detailed budget itemizing the estimated cost of the Plan
22 of Action. The budget incorporates a variety of funding resources, including grants,
23 loans, and funds from DMHSA and DISID. Absent immediate funding, the
24 objectives in the Amended Permanent Injunction will be further delayed and
25 members of the target population will continue to be deprived of a constitutionally
26 and statutorily compliant community-based mental health system. Accordingly, the
27 Court hereby orders all branches of the Government of Guam, including but not
28 limited to all Government of Guam agencies, departments, and entities, to work

1 cooperatively and expeditiously with the FMT to implement the objectives set forth
2 in the Plan of Action and meet the deadlines provided therein and/or in the FMT's
3 quarterly status reports. The Court reminds all parties and relevant non-parties that
4 the Court possesses the authority and discretion to impose a wide-range of sanctions,
5 including a finding of contempt, for failure to comply with this, or any other, Order.
6 *See, e.g., Irwin v. Mascott*, 370 F.3d 924, 931-32 (9th Cir. 2004); *see also United*
7 *States v. Gov't of Guam*, 2008 U.S. Dist. LEXIS 89102, *25-26 (D. Guam Oct. 22,

8 2008).

9 CONCLUSION

10 To achieve compliance with the Amended Permanent Injunction and
11 implement the Plan of Action, the Court has established a funding schedule, as set
12 forth below, to effectuate prompt, incremental payment of the *res* in coordination
13 with the projected timeline set forth in the Plan of Action. Accordingly, the Court
14 hereby orders:

- 15 1. The Government of Guam shall deposit an initial *res* in the amount of
16 \$15,950,000, which represents the cost of implementing the Amended
17 Permanent Injunction and Plan of Action, in accordance with the
18 following funding schedule. The first three payments shall be deposited
19 with the Clerk of Court, and all subsequent payments shall be deposited
20 with a trustee, to be designated by the FMT and approved by the Court:
 - 21 a. \$2,000,000 to be deposited no later than November 30, 2010;
 - 22 b. \$2,000,000 to be deposited no later than January 3, 2011;
 - 23 c. \$1,000,000 to be deposited no later than February 1, 2011;
 - 24 d. \$2,000,000 to be deposited no later than March 1, 2011;
 - 25 e. \$500,000 to be deposited no later than April 1, 2011;
 - 26 f. \$3,200,000 to be deposited no later than May 2, 2011;
 - 27 g. \$1,000,000 to be deposited no later than July 1, 2011;
 - 28 h. \$500,000 to be deposited no later than September 1, 2011;

- 1 i. \$1,500,000 to be deposited no later than October 3, 2011;
2 j. \$1,000,000 to be deposited no later than January 3, 2012;
3 k. \$1,000,000 to be deposited no later than August 1, 2012; and
4 l. 250,000 to be deposited no later than May 1, 2013.
- 5 2. The Government of Guam and the parties shall work cooperatively with
6 the FMT to prepare a funding schedule for the costs of the Center,
7 which will facilitate the comprehensive delivery of services and
8 programs to the target population in an efficient manner. The funding
9 schedule shall be submitted to the Court for approval in the FMT's
10 March 2011 status report.
- 11 3. The FMT shall designate a trustee and submit to the Court a request for
12 appointment of trustee no later than February 1, 2011.

13
14 IT IS SO ORDERED.

15
16 DATED: November 9, 2010

By 
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE